

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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DISTRICT OF MASS.

JAGUAR CARS, a Division of the Ford
Motor Company,
Plaintiff,

v.

Civil Action No. 03CV12532RGS

LEE IMPORTED CARS, INC.,
Defendant/Third-Party Plaintiff,

v.

JOHN DOE,
Being the Fictitious Name of
Third-Party Defendant.

**DEFENDANT LEE IMPORTED CARS, INC.'S MOTION TO STRIKE
PORTIONS OF THE DECLARATION OF GEORGE DELANEY**

Defendant Lee Imported Cars, Inc. ("Lee") hereby moves, pursuant to Fed. R. Civ. P. 56(e), to strike Paragraph 4 and Exhibit 3 from the Declaration of George Delaney ("Delaney Declaration"). As grounds therefore, Lee states that Paragraph 4 contains statements not based on personal knowledge and Exhibit 3 contains calculations that are violative of M.G.L. c. 93B. More specifically, Paragraph 4 references, and Exhibit 3 includes, a Dealer Distance Map prepared by Urban Science Applications, Inc. ("USAI"). Paragraph 4 contains a statement by George Delaney that the "distance between Lee Jaguar and the Norwood point is 10.5 miles," which is not based upon Mr. Delaney's personal knowledge. In addition, Exhibit 3 attempts to calculate a distance between two addresses, which is not the proper method for distance calculation as set forth in M.G.L. c. 93B, § 1(6) (amended 2002). Section 1 of Chapter 93B

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requires that "a radius measurement shall be drawn from the closest boundary of the existing dealership to the closest boundary of the site for the proposed dealership or relocation." M.G.L. c. 93B, § 1(6); *see also American Honda Motor Co., Inc. v. Richard Lundgren, Inc.*, 314 F.3d 17, 22 (2002) (stating boundary can be used in measuring relevant market area under 2002 amendment). As Exhibit 3 fails to follow the proper methodology and, in fact, fails to list the specific methodology used, it must be stricken.

WHEREFORE, Lee respectfully requests that Paragraph 4 and Exhibit 3 of the Delaney Declaration be stricken.

CERTIFICATION PURSUANT TO RULE 7.1(A)(2)

In accordance with Local Rule 7.1(A)(2), counsel hereby certifies that he has conferred and attempted in good faith to resolve or narrow the issues presented in this Motion.

LEE IMPORTED CARS, INC.,
By its attorneys,



Jason A. Manekas, Esquire, BBO No. 632073
Bernkopf, Goodman & Baseman LLP
125 Summer Street, Suite 1300
Boston, Massachusetts 02110
Telephone: (617) 790-3000

Dated: April 5, 2004
#287410 v1/24440/4802

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
CLERK'S OFFICE
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JAGUAR CARS, a Division of the Ford
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CERTIFICATE OF SERVICE

I, Jason A. Manekas, hereby certify that copies of (i) Defendant Lee Imported Cars, Inc.'s Opposition to Jaguar's Motion for (1) Summary Judgment on its Declaratory Judgment Claim and (2) Partial Dismissal of Defendant's Counterclaims, (ii) Affidavit of Christopher J. Lee, (iii) Defendant Lee Imported Cars, Inc.'s Response to Plaintiff's Statement of Material Facts, and (iv) Defendant Lee Imported Cars, Inc.'s Motion to Strike Portions of the Declaration of George Delaney were served upon Sarah C. Kellogg, Esquire, Kirkpatrick & Lockhart LLP, 75 State Street, Boston, Massachusetts 02109 via hand delivery on this 5th day of April 2004.

Signed under the pains and penalties of perjury this 5th day of April 2004.


Jason A. Manekas